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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,435	06/26/2002	Frank Uhlik	15353	9151
7590 11/17/2004				
Frank S DiGiglio				
Scully Scott Murphy & Presser				
400 Garden City Plaza				
Garden City, NY 11530				
		EXAMINER		
		TRAN LIEN, THUY		
		ART UNIT		
		PAPER NUMBER		
		1761		

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/088,435

Applicant(s)

UHLIK, FRANK

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 and 66-115 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-13,17-22,26-29,33-45,66,68-70,74-77,79-82,86,87,90,95-97 and 102-115 is/are rejected.
- 7) ☒ Claim(s) 2-4,14-16,22-25,30-32,71-73,83-85,92-94 and 99-101 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Claims 1,5,6-8,9-13,17-22,26-28,29,33-37,38-45,66,68,69,70,74-77,79-82,86,87-90, 95-97,102-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneko et al.

Kaneko et al disclose a food modifier. The modifier comprises 1 part protein, .5-4 parts of edible fat and oil, 3.5-13 parts of water and .5-2 parts of at least one material selected from the group consisting of mashed potato powder, sweet potato powder and starch. Examples of edible fat and oil include coconut oil, soybean oil, palm oil, palm kernel oil etc... Starches include tapioca starch, sweet potato starch, potato starch etc.. The modifier is made by mixing and heating the ingredients. The modifier is mixed with other food ingredients and the mixture is processed to form food product. (see col. 1 lines 41-65, col. 2 and columns 3-4)

Kaneko et al do not disclose the modifier as a gluten substitute food ingredient, the content of gluten in the modifier, the type of protein such as listed in claim 18, the amount of protein as claimed, the temperature of heating as claimed, heating by extrusion and microwaving, the protein to fat ratio claimed, drying and grinding the modifier.

While Kaneko et al do not disclose the modifier as a gluten substitute, the modifier contains all the same ingredients as the claimed substitute; thus, it would have been obvious to one skilled in the art at the time of the invention to use the modifier as a gluten substitute when one wants to modify the gluten content of the food product being made. The modifier is made from starch which does not have gluten; thus, it is obvious the gluten content is within the range claimed. It would have obvious to one skilled in

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the art to increase the protein a little to enhance the nutrition of the product. The claimed protein amount is about 2 which can be less than 2; this is not seen to be much different from the 1% disclosed in Kaneko et al. When the protein content is increase, it is obvious the protein to fat ratio will change. It would have been obvious to alter this ratio depending on the amount of protein and fat wanted. It would have been obvious to use any kind of protein depending on the taste wanted. Kaneko et al teach to use soybean protein which is the same type of protein claimed. Thus, it is obvious the protein can provide both the fat and protein sources. It would have been obvious to one skilled in the art to vary the heating temperature depending on the time of heating; for example, it would have been obvious to use higher temperature for a shorter period of time or vice versa. It would have been obvious to dry the emulsifier if a dried product is wanted and to grind the modifier to make it easier for incorporation in the food ingredients. Since Kaneko et al teach to mix the ingredients, the modifier is an aerated mass because mixing incorporates air. The claims do not define what aerated mass encompasses. It would have been obvious to use any means of heating known in the art to heat the ingredients. Heating by microwave or extrusion is both well known in the art.

Claims 2-4, 14-16,23,22-25,30-32,71-73,83-85,92-94,99-101 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There is no suggestion in Kaneko et al to use the amounts of starch and water

as claimed; thus, there is no suggestion to make the fat:starch and protein:starch ratios as claimed.

Applicant's arguments with respect to claims 1-45,66-115 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 14, 2004


LIEN TRAN
PRIMARY EXAMINER
